



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

**REGION 4
SAM NUNN ATLANTA FEDERAL CENTER
61 FORSYTH STREET, SW
ATLANTA, GEORGIA 30303-8960**

May 9, 2022

Colonel James L. Booth
District Commander
Jacksonville District
Department of the Army, Corps of Engineers
Tampa Permits Section
Attn: Ms. Jessica Cordwell
10117 Princess Palm Drive
Tampa, Florida 33610-8302

Subject: SAJ-2019-03161 (SP-JLC) The Bay Park Conservancy - Sunset Boardwalk Pier, Sarasota County, Florida

Dear Colonel Booth:

The Environmental Protection Agency has reviewed the March 18, 2022 public notice (PN) for the above referenced project regarding a Clean Water Act (CWA) Section 404 permit application submitted by the Bay Park Conservancy. The applicant proposes to construct a 21,290 square foot circular pier consisting of a main boardwalk platform with two canopied sections, two transition platforms, four connector bridges, and a floating platform attached with two gangways over a portion of Sarasota Bay in Sarasota County, Florida, for the purpose of access to Sarasota Bay for passive public recreation and education. The EPA's review was informed by information shared during a video-conference hosted by the U.S. Army Corps of Engineers on April 4, 2022, with participation by the applicant, the U.S. Fish and Wildlife Service, the National Marine Fisheries Service, and Florida Fish and Wildlife Conservation Commission. The EPA is providing the following comments and recommendations pursuant to the CWA Section 404(b)(1) Guidelines set forth at 40 C.F.R. Part 230 (the Guidelines).

The project as proposed would result in direct impacts to 4,220 square feet of submerged aquatic vegetation (SAV) and 7,445 square feet of hardbottom and stony coral (*Solenastrea bournoni*, *Solenastrea hyades*, and *Oculina robusta*). Based on the information presented in Appendix G, it is unclear whether there may be direct impacts from discharges of dredge or fill material to mangrove wetlands. The EPA requests clarification regarding whether there are any direct impacts from the discharge of dredge or fill material to any mangrove wetlands.

As referenced in previous letters that we have issued to your office, the EPA considers SAV, hardbottom, corals, and mangrove wetlands to be Aquatic Resources of National Importance (ARNI). The Gulf of Mexico Fishery Management Council has identified SAV, hardbottom, coral reefs, and mangrove wetlands as essential fish habitat for postlarval, juvenile and subadult shrimp; postlarval, juvenile and adult red drum; postlarval, juvenile and adult gray snapper; juvenile red and gag groupers;

juvenile and adult yellowtail and lane snappers; and juvenile black grouper. The project area has also been designated as Essential Fish Habitat by the National Marine Fisheries Service for highly migratory species including bull, lemon, and bonnethead sharks. SAV maintains water clarity by trapping fine sediments and particles with their leaf canopy, stabilizes sediments with their roots and rhizomes, and provides shelter for commercially and recreationally important fishes, crustaceans, and shellfish. Hardbottom and coral habitats, including solitary corals on sand bottoms such as those found in the project area, support a wide array of hermatypic and ahermatypic corals, finfish, invertebrates, algae, plants, and microorganisms. Along with the many ecosystem services and functions they provide, the submerged roots of the mangroves are critical to the human environment in terms of coastal resiliency and rising sea levels. The mangrove wetlands also strengthen shorelines by retaining soil otherwise carried away by wind and waves and their intertwined foliage also acts as a windbreak protecting coastal homes and other structures from storm events.

40 C.F.R. § 230.10(a) of the Guidelines states that no discharge of dredge and/or fill material into waters of the United States shall be permitted if there is a practicable alternative to the proposed discharge which would have less adverse impacts on the aquatic environment, provided the alternative does not have other significant adverse environmental consequences. The PN did not demonstrate how or whether any alternatives other than the proposed project were considered that would accomplish the purpose of the project. In order to evaluate whether an alternatives analysis meets the requirements of the Guidelines, the EPA requests that the applicant provide information that demonstrates a detailed analysis of alternatives including alternatives that do not have any impacts to SAV, hardbottom, corals, or mangrove wetlands.

Regulations at 40 C.F.R. § 230.11 require the consideration of secondary and cumulative impacts from the proposed activity. We believe the project may cause secondary impacts to aquatic resources, including SAV, hardbottom, corals and mangrove wetlands, from sedimentation and turbidity resulting from piling driving and operation of motorized construction vessels in and adjacent to these habitats. In-water construction operations can contribute to the loss of coral habitats, either directly due to the removal or burial of reefs, or indirectly as a consequence of lethal or sublethal stress to corals caused by elevated turbidity and sedimentation. Further, coral populations in Florida are stressed and have experienced considerable declines in populations due to Stony Coral Tissue Loss Disease. The EPA recommends that a detailed assessment of the secondary and cumulative effects of the project be conducted and provided that demonstrates how the requirements set forth in 40 CFR §230.11 are fully addressed.

In accordance with 40 C.F.R. Part 230, subpart J, compensatory mitigation may be used following appropriate avoidance and minimization measures. While the project as proposed has not adequately demonstrated how avoidance measures were considered in accordance with 40 CFR 230.10(a), as described above, the proposed mitigation plan does not adequately demonstrate that it will offset the proposed impacts to SAV, mangrove wetlands, hardbottom, and coral resources. The available information did not demonstrate whether the proposed mitigation complies with the mitigation hierarchy stipulated by the regulations set forth by 40 C.F.R. Part 230, subpart J. In addition, the potential success of the proposed onsite mitigation is uncertain, and the information provided does not provide provisions that would ensure compensatory mitigation requirements are adequately addressed in the event one or more of the proposed mitigation efforts are not fully successful.

We believe that the proposed project may result in substantial and unacceptable impacts to SAV, hardbottom, coral, and mangroves, which EPA considers to be ARNI. The EPA appreciates the

applicant's interest in environmental education, and we are supportive of any such efforts, as long as those efforts are compliant with applicable regulations, including the Guidelines.

Thank you for providing an opportunity for the EPA to comment, in accordance with the field level procedures outlined in the 1992 404(q) Memorandum of Agreement Part IV, Paragraph 3(a) between our agencies. If you have any questions, please contact me, or have someone from your staff contact Cynthia Van Der Wiele, Ph.D. at vanderwiele.cynthia@epa.gov or by telephone at 919-294-4492.

Sincerely,

Jeaneanne M. Gettle, Director
Water Division

cc: Mr. Brendan T. Myers
U.S. Fish and Wildlife Service

Mr. Mark Sramek
National Marine Fisheries Service